

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

LC2003-000260-001 DT

09/18/2003

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT  
P. M. Espinoza  
Deputy

FILED: \_\_\_\_\_

STATE OF ARIZONA

ANH SPIEK

v.

JOHN L SANCHEZ (001)

JOHN L SANCHEZ  
8621 W GOLDEN LN  
PEORIA AZ 85345

PEORIA JUSTICE COURT  
REMAND DESK-LCA-CCC

MINUTE ENTRY

PEORIA JUSTICE COURT

Cit. No. #0074390

Charge: A) 4-8A

DOB: 04/22/59

DOC: 10/17/02

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124 (A).

This matter has been under advisement and the Court has considered and reviewed the record of the proceedings from the trial court, exhibits made of record and the memoranda submitted.

In the case at hand, Appellant, John L. Sanchez, was charged with one count of Animal Disturbance/Barking Dog in violation of Peoria City Code Section 4-8(A), a class 1  
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misdemeanor offense. Appellant's dog was notorious in Appellant's neighborhood for its incessant barking. Police officers explained several remedial measures to Appellant, but these efforts were fruitless – the dog continued to bark. The dog's daytime barking had gone on for over two and a half years. On the day Appellant was cited, a police officer responded to a neighbor's complaint call and witnessed Appellant's dog bark incessantly, for no apparent reason. Appellant was cited for a violation of Peoria City Code Section 4-8(A). After a bench trial Appellant was found guilty, and has filed a timely Notice of Appeal in this case. The only issue raised by Appellant on appeal concerns the constitutionality of Peoria City Code Section 4-8(A).

Appellant argues that Peoria City Code Section 4-8(A) is unconstitutionally vague, violating the Due Process clause of the Fourteenth Amendment of the U.S. Constitution. Appellant raises an issue of constitutional dimension and statutory construction. In matters of statutory interpretation, the standard of review is *de novo*.<sup>1</sup> An appellate court does not reweigh the evidence.<sup>2</sup> Instead, the evidence is reviewed in a light most favorable to affirming the lower court's ruling.<sup>3</sup> Appellate courts must also review the constitutionality of a statute *de novo*.<sup>4</sup>

Peoria City Code Section 4-8(A) provides as follows:

It shall be unlawful to keep any animal in such a manner so as to disturb the peace, comfort or health of any person residing within the city. Any person violating any provisions of this chapter shall be guilty of a class one misdemeanor. Alternatively, the city may enforce this chapter by imposing civil penalties not to exceed the maximum fine of \$2,500.00 for a class one misdemeanor.

There is a strong presumption in Arizona that questioned statutes and ordinances are presumed to be constitutional, and the party asserting its unconstitutionality has a burden of clearly demonstrating the unconstitutionality.<sup>5</sup> Whenever possible, a reviewing court should construe an ordinance so as to avoid rendering it unconstitutional, and resolve any doubts in favor of constitutionality.<sup>6</sup> A statute is unconstitutionally vague if it fails to give persons of average intelligence reasonable notice of what behavior is prohibited, or if it is drafted in such a manner that permits arbitrary and discriminatory enforcement.<sup>7</sup> A statute or ordinance may be

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<sup>1</sup> *In re: Kyle M.*, 200 Ariz. 447, 448, 27 P.3d 804, 805 (App. 2001). See also, *State v. Jensen*, 193 Ariz. 105, 970 P.2d 937 (App. 1998).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *McGovern v. McGovern*, 201 Ariz. 172, 33 P.3d 506 (App. 2001); *Ramirez v. Health Partners of Southern Arizona*, 193 Ariz. 325, 972 P.2d 658 (App. 1998).

<sup>5</sup> *State v. Lefevre*, 193 Ariz. 385, 389, 972 P.2d 1021, 1025 (App. 1998); *Larsen v. Nissan Motor Corporation in the United States*, 194 Ariz. 142, 978 P.2d 119 (App. 1998).

<sup>6</sup> *Id.*

<sup>7</sup> *State v. Lefevre*, supra; *State v. Steiger*, 162 Ariz. 138, 781 P.2d 616 (App. 1989).

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impermissibly vague because it fails to establish standards for the police and public that are sufficient to guard against the arbitrary deprivation of liberty interests.<sup>8</sup> Due process does not require that a statute or ordinance be drafted with absolute precision.<sup>9</sup> Whenever the language of a legislative enactment is unclear, the courts must strive to give it a sensible construction and, if possible, uphold the constitutionality of that provision.<sup>10</sup>

Appellant argues that the term “disturb” is too subjective because there is no legal definition. The Arizona Court of Appeals addressed a closely related issue in *State v. Singer*.<sup>1</sup> In *Singer*, the appellant argued that the Phoenix City Code was unconstitutionally vague. The challenged ordinance read:

No person shall keep a dog within the City limits which is in the habit of barking or howling or disturbing the peace and quiet of any person within the City. [emphasis added]

The appellant in *Singer* argued that the ordinance provided no objective standard that the victim be a person of ordinary sensibilities, and that prevented dog owners from knowing whether their dogs' behavior fell within the meaning of the ordinance. The Court upheld the code stating that inherent in the phrase “any person” was a presumption that the person be a reasonable person.<sup>2</sup>

In the case at hand, the specific language of Peoria City Code Section 4-8(A) clearly gives persons of average intelligence reasonable notice of behavior that is prohibited: allowing an animal to disturb the peace, comfort or health of any person residing within the city. Additionally, it is obvious that the code was not drafted in such a manner that would permit an arbitrary or discriminatory enforcement of the ordinance. While a legislative enactment must “provide explicit standards for those who will apply it,”<sup>3</sup> “[t]he due process requirement of a fair and definite warning does not mandate perfect notice or absolute precision.”<sup>4</sup> “As has been aptly stated, ‘condemned to the use of words, we can never expect mathematical certainty from our language.’”<sup>5</sup>

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<sup>8</sup> *Recreational Developments of Phoenix, Incorporated v. City of Phoenix*, 83 F.Supp.2d 1072, 1087 (D.Ariz. 1999), citing *City of Chicago v. Morales*, 527 U.S. 41, 119 S.Ct 1849, 144 L.Ed.2d 67 (1999).

<sup>9</sup> *State v. Lefevre*, supra; *State v. Takacs*, 169 Ariz. 392, 819 P.2d 978 (App. 1991), citing *Fuening v. Superior Court*, 139 Ariz. 590, 680 P.2d 121 (1983).

<sup>10</sup> *State v. Fuening*, supra; see Maricopa County Juvenile Action No. JT9065297, 181 Ariz. 69, 887 P.2d 599 (App. 1994), citing *State v. Wagstaff*, 164 Ariz. 485, 794 P.2d 118 (1990).

<sup>1</sup> 190 Ariz. 48, 945 P.2d 359, 239 Ariz. Adv. Rep. 27 (App. 1997).

<sup>2</sup> *Singer*, 190 Ariz. at 51, 945 P.2d at 362.

<sup>3</sup> *State v. Takacs*, 169 Ariz. 392, 394, 819 P.2d 978, 980 (App.1991).

<sup>4</sup> *State v. Phillips*, 178 Ariz. 368, 370, 873 P.2d 706, 708 (App.1994).

<sup>5</sup> *State v. Cole*, 18 Ariz.App. 237, 238, 501 P.2d 413, 414 (1972) (quoting *Grayned v. City of Rockford*, 408 U.S. 104, 110, 92 S.Ct. 2294, 2300, 33 L.Ed.2d 222 (1972)).

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This Court finds that Peoria City Code Section 4-8(A) is not vague; a ceaseless barking dog is an obvious disturbance of the peace, comfort or health of any person residing within the city.

IT IS THEREFORE ORDERED affirming the findings of guilt and sentences imposed by the Peoria Municipal Court.

IT IS FURTHER ORDERED remanding this matter back to the Peoria Municipal Court for all further, if any, and future proceedings.